

SUMMARY COMPLIANCE

**PROGRAM AGREEMENT**

[DOL Form SCPA(AM).P1]



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[SCPA(AM) .2]

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## **SUMMARY COMPLIANCE PROGRAM AGREEMENT**

[SCPA(AM) .2]

The U.S. Department of Labor (called the DOL) and the signatory firm (called the FIRM), in the interests of promoting compliance by the FIRM with Section 15(a) (1) of the Fair Labor Standards Act, as amended (29 U.S.C. 201, et seq.), called the Act, hereby agree as follows:

### **1. SCOPE OF AGREEMENT: COMPLIANCE WITH ACT & COMPLIANCE PROGRAM**

a) The FIRM will comply with this Summary Compliance Program Agreement (called SCPA) with respect to all of its activities.

b) The FIRM will comply with the provisions of Section 15(a) (1) of the Act, as interpreted by DOL, and will take all reasonable steps, including those specified in this SCPA, to help ensure that it does so.

### **2. DEFINITIONS OF CERTAIN TERMS**

a) For purposes of this SCPA (including this paragraph 2), the definitions set forth in this paragraph 2 are applicable.

b) The term "SCPA" includes this SCPA, including any actual or referenced attachments .

c) The term "DOL" means the United States Department of Labor.

d) The term "Contractor" includes any one or more persons or firms (other than the FIRM) that supply, directly or indirectly by way of one or more layers of sub-contracts or otherwise, the performance of any service called for to fill any purchase made by the FIRM (and includes any prospective or proposed Contractor, where indicated by the context) .

e) The term "ECP" means the Employer Compliance Program that is DOL Form ECP(AM).P3 or a substitute program approved by the DOL in writing in advance under the provisions of paragraph 8 of this SCPA.

f) The term "FIRM" means the firm executing this SCPA.

g) The term "goods" includes any apparel (inclusive of any textile material included or to be included in any apparel) at any stage of manufacture or distribution.

h) The term "PMC" means the Program to Monitor Contractors that is the DOL'S Form PMC(AM).P1 or a substitute program approved by the DOL in writing in advance under the provisions of paragraph 8 of this SCPA.

i) The term "purchase" includes any order or contract on which any Contractor performs

any work.

j) The term "service" means any service(s) performed on any good(s) .

k) The terms "ship (in commerce)" and "shipment (in commerce) " include any transporting, offering for transportation, shipping, delivering, or selling (in commerce) and include any shipping, delivering, or selling with knowledge (or reason to believe) that shipment, delivery, or sale (in commerce) is intended.

l) Terms used in this SCPA that are also used in the Act have the meaning that they have in the Act, except where indicated otherwise expressly or by context in this SCPA.

### **3. PRE-CONTRACT PROCEDURES; EVALUATION OF CONTRACTORS**

a) Prior to the FIRM's entering into any particular purchase (and periodically thereafter) , the FIRM will review with the owner (or a top management official) of the Contractor personally:

i) the terms of the ECP,

ii) the purposes of the ECP and this underlying SCPA,

iii) the economic feasibility of the price terms that are involved, in light of the compliance with the Act and the ECP required of the Contractor and in light of the calculations and expectations of the parties to the purchase, and

iv) the Contractor's willingness and ability to both fully understand and fully comply with the Act and the ECP; and

all topics covered by the review, including any calculations by which economic feasibility of the price terms were evaluated, will be documented by the FIRM if any purchase is made by the FIRM, if the Contractor is involved in any way.

b) If such a review discloses an unreasonable risk that the Act and/or the ECP will not be fully understood and complied with by the Contractor, then the FIRM will not permit the Contractor to be involved in

any purchase by the FIRM.

#### **4. EMPLOYER COMPLIANCE PROGRAM FOR CONTRACTORS; MONITORING CONTRACTOR COMPLIANCE**

a) Whenever the FIRM makes any purchase from a Contractor, the purchase will be in writing. Prior to the start of any work, the FIRM will require the Contractor to sign an ECP; but this may be accomplished by an appropriate reference to the ECP in a purchase order where the particular Contractor already has a signed ECP with the FIRM on an ongoing basis.

b) The FIRM will furnish to each Contractor appropriate informational materials on compliance with the Act.

c) The FIRM will monitor and enforce full compliance with the Act and the ECP by all Contractors in all activities connected with any purchase by the FIRM, including using all the measures specified in the PMC. However, a Contractor performing no cutting, sewing, or finishing may be excluded from monitoring required by the PMC if the Contractor enterprise's annual dollar volume of sales made or business done exceeds one million dollars, provided that the FIRM keeps the DOL fully informed in writing of the name and actual business address of each firm being excluded.

d) Periodically, the FIRM will provide appropriate training for all the Contractors working on purchases by the FIRM (regarding how to comply with the Act and the ECP) and for all those conducting monitoring activities on its behalf (regarding how to meet the monitoring requirements of the P.C.), except to the extent the DOL in writing excuses the FIRM from doing so.

#### **5. RECORDS TO BE KEPT BY FIRM; REPORTS TO BE MADE BY FIRM**

a) On each purchase by the FIRM, it will supply a copy of the contract or order to the Contractor at the start of the purchase; and it will keep a copy in its own records.

b) The FIRM will make, keep, and preserve records on each purchase, including records of all the FIRM's monitoring and enforcement activities, the findings made in doing so, the basis of the findings, and the records required by the PMC.

c) The FIRM will make, keep, and preserve records on each Contractor that identify each purchase made by the FIRM involving that Contractor.

d) Records required by this paragraph 5 need not be kept by the FIRM in any particular form or format; but they will be kept so that they are readily retrievable by the FIRM by reference to the name of the Contractor and also by reference to the particular goods involved (by the identifying criteria customarily used to identify particular goods in process or already shipped).

e) Records required by this SCPA to be made or kept will be preserved for a period of 12 months after completion of all work on the purchase (36 months after such completion if the FIRM finds (or is notified, prior to the expiration of the 12 months, by

the DOL in writing that DOL has found) any violation of the Act by the Contractor with respect to that purchase or any other purchase involving the Contractor.

f) The FIRM will make available to DOL all records required by this SCPA to be made, kept, or preserved by the FIRM, for inspection and/or copying by the DOL when the DOL requests the FIRM to do so; and the FIRM will make such re-ports in writing to the DOL from such records as the DOL may request.

g) Not less frequently than semi-annually, the FIRM will submit to the DOL a written report summarizing all its monitoring and enforcement activities; and the first of such reports will be submitted no later than six months after execution of this SCPA. Although no particular form or format is required for such reports, DOL will furnish a sample format on request.

#### **6. CONTRACTOR VIOLATIONS; USE OF THE PAYROLL-REPORTING PROCESS**

a) Whenever the FIRM finds that a Contractor subject to an ECP has failed to comply fully with the Act regarding any purchase by the FIRM, the FIRM will notify the DOL and (if requested to do so by DOL) require that the Contractor submit to the FIRM each workweek (for a period of up to 12 months from the date of the finding) a report to the FIRM documenting the Contractor's compliance with the Act and the ECP, in detail; and a copy of the entire report from the Contractor will be sent by the FIRM to the DOL for each workweek, to the extent that the DOL requests the FIRM to do so.

b) The FIRM may decline to impose the payroll-reporting measures as specified in this paragraph 6 if there are no serious, substantial, uncorrected, prior, or willful violations involved, provided there were no knowing recordkeeping omission or inaccuracies by the Contractor that might have impaired or impeded the FIRM and/or DOL in determining whether the provisions of Sections 6 and/or 7 of the Act were being fully complied with by the Contractor.

#### **7. SCOPE OF APPLICABILITY MEASURES REGARDING OWNERS/MANAGERS**

a) Whenever the FIRM is required to implement special measure(s) under paragraph 6 of this SCPA regarding a Contractor, the measures will also be implemented with respect to each related Contractor.

b) For the purposes of this paragraph 7, a Contractor is a related Contractor whenever a substantial direct or beneficial overlap in ownership or management exists (at the time of a purchase or at any time during performance of any work thereon); but the required relatedness will not be deemed to exist where the FIRM has, after reasonable inquiry, no notice of facts that would tend to show such relatedness.

#### **8. SUBSTITUTE ECPS AND PMCS**

a) For purposes of this SCPA, the terms

"ECP" and "PMC" mean the Employer Compliance Program (DOL Form ECP(AM).P3) and the Program to Monitor Contractors (DOL Form PMC(AM).P1), respectively, except as otherwise provided in this paragraph 8.

b) The FIRM may at any time propose, in writing, an alternative employer compliance program for use as the ECP under this SCPA, as a substitute for DOL Form ECP(AM).P3; but a substitution will not be implemented without the prior approval of the DOL in writing.

c) The FIRM may at any time propose, in writing, an alternative program to monitor Contractors for use as the PMC under this SCPA as a substitute for DOL Form PMC(AM).P1; but the substitution will not be implemented without the prior approval of DOL in writing.

d) To avoid confusion among Contractors (and the apparel industry generally), any alternative program approved by DOL under this paragraph 8 will (except in this SCPA itself) be referred to by the FIRM as being a "Substitute ECP" (rather than as an "ECP") or as being a "Substitute PMC" (rather than as a "PMC").

#### **9. HANDLING GOODS MADE "HOT" BY VIOLATIONS**

a) Whenever the FIRM finds any act or omission by a Contractor that violates Sections 6 and/or 7 of the Act with respect to any work on any goods the FIRM has shipped during the term of this SCPA or will ship during the term of this SCPA, the FIRM will immediately

i) suspend all shipment of goods affected by such violations,

ii) notify the DOL in writing of its findings, furnishing to the DOL such additional information as DOL may request in writing, and

iii) abstain from all shipment in commerce of any such goods, except to the extent that the DOL in writing lifts its objections to the FIRM's doing so with respect to specified goods with respect to specified violations by a specified Contractor at a specified Contractor establishment during a specified period.

b) Neither the DOL'S approval of backwage amounts or payments nor this SCPA itself constitutes DOL approval for any shipment in commerce of goods produced in violation of Section 6 and/or 7 of the Act, except to the extent expressly provided for in subparagraph a(iii) of this paragraph 9.

c) Making a backwage payment under this SCPA does not constitute supervision by the DOL for purposes of Section 16 of the Act, absent DOL's express approval in writing to that effect in each instance, obtained in advance of the payment to affected employees.

d) In the event that the DOL notifies any retailer or other downstream customer of the FIRM of any allegedly "hot" goods having been sold or shipped by the FIRM to the customer, directly or indirectly, the DOL will also inform that customer of any action taken by the FIRM in obtaining from DOL a lifting of DOL's objections pursuant to the

provisions of subparagraph a(iii) of this paragraph 9, to the extent then known to the DOL.

#### **10. POTENTIAL LITIGATION: IMPACT OF THIS AGREEMENT**

a) While this SCPA is in effect, DOL will not initiate litigation against the FIRM to enjoin violations of Section 15(a) (1) of the Act with respect to any violations involved in any purchase(s) by the FIRM, unless the DOL first gives the FIRM notice in writing and affords the FIRM an opportunity to meet and confer with the DOL with respect to whether litigation is necessary or appropriate. However, such notice and opportunity-to-meet-and-confer processes will not apply if the DOL reasonably concludes that:

i) the FIRM has willfully violated Section 15(a) (1) of the Act and/or this SCPA, or

ii) such a violation is imminent and cannot be prevented by the DOL unless such litigation is initiated.

b) Any violations of this SCPA, as well as any violations of the Act, may be relied upon in any such litigation at any time. In response, however, the FIRM may show whether the violations (if any) were insubstantial in nature and extent and may show the steps taken by the FIRM to avoid and remedy them.

c) The activities that the FIRM undertakes by this SCPA to engage in are subject to enforcement by specific performance during the term of this SCPA at the instance of the DOL, in addition to any of the other rights or remedies available to the DOL; but the FIRM reserves the right to cease at any time doing business, direct or indirect, with any Contractor.

#### **11. INITIAL IMPLEMENTATION OF THIS AGREEMENT**

a) This SCPA will be fully implemented in accordance with its terms no later than 60 days after execution, except as is otherwise specified in this paragraph 11.

b) Neither heightened monitoring under the PMC nor imposition of special payroll-reporting Processes (as provided for in paragraph 6 of this SCPA) will be required on the basis of non-willful violations of the Act found by the FIRM to have been committed by a Contractor in the phase-in period so long as the FIRM conducts additional monitoring, within 30 days, that discloses that no violations of the Act and/or the ECP have taken place since the monitoring resulting in that violation finding.

c) Notwithstanding any other provision of this paragraph 11: whenever a Contractor listed in the paragraph A (if any) at the start of this SCPA is involved in any existing or future (in the 12-month period after the DOL violation finding triggering that listing) purchase by the FIRM, the FIRM will immediately utilize, with respect to that Contractor, at least the intermediate-intensity monitoring as provided for in the PMC until no fewer than two consecutive monitoring visits by the FIRM required by

the PMC verify full correction by the Contractor continuously throughout a 180-day period after the problem was (at any time and by any means) last noted; and the monitoring will be continued thereafter as in the case of any other Contractor, at an intermediate or high-intensity level if monitoring conducted during that period so indicates under the criteria set forth in the PMC for determining the intensity of monitoring.

#### 12. DURATION & TERMINATION OF THIS AGREEMENT

- a) This SCPA is effective upon execution.
- b) This SCPA will remain in effect for 60 days' from execution or until it is terminated (by the DOL or the FIRM), whichever occurs later. Any such termination must be in writing by certified mail, return receipt requested, to the other party to this SCPA; and any such termination will take effect ten days after such notice is so mailed or such later date as is specified in the termination notice itself.
- c) This SCPA can be modified only in writing and only in a writing that undertakes by its express terms to modify this SCPA and is signed by the parties to this SCPA .

d) If the execution of this SCPA is accomplished by the execution of a Memorandum of Agreement that agrees to this SCPA by reference (with or without any modifications and/or clarifications) , that Memorandum of Agreement will be subject to the termination provisions of this SCPA; and a termination (of this SCPA according to its terms) will also have the same effect on the Memorandum of Agreement.

#### 13. NOTICES BETWEEN THE PARTIES

- a) Whenever this SCPA (inclusive of any attachment(s) ) requires notice by a party to this SCPA to the other party to this SCPA in writing, the notice will be sent or delivered to the address furnished by the addressee party at the time of the execution of this SCPA by the addressee party (or such other address as the addressee party may thereafter designate for such purposes by giving written notice thereof to the other party to this SCPA in writing by certified mail, return receipt requested) .
- b) A notice to a party to this SCPA is deemed received if it is actually received or a certified mail return receipt indicating such receipt is executed at said address.